IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.8189 OF 2004

Ravindra Abhiman More .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

WITH

WRIT PETITION NO.8191 OF 2004

Popat Dhana Khairnar .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

WITH

WRIT PETITION NO.8203 OF 2004

Chandrasdhekhar Sashikant Joshi .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

WITH

WRIT PETITION NO.8232 OF 2004

Dinesh Uttamrao Patil .. Petitioner
Versus
State of Maharashtra & Ors. .. Respondents

WITH

WRIT PETITION NO.8236 OF 2004

Vijay Madhukar Khairnar .. Petitioner
Versus
The State of Maharashtra & Ors. .. Respondents

Mr.N.V.Bandiwadekar for petitioners

Mr.N.P.Deshpande, A.G.P. for State.

CORAM : A.P.SHAH AND
S.C.DHARMADHIKARI, JJ.

DATE : 10TH DECEMBER 2004.

P.C.

. Heard Mr.Bandiwadekar, learned Counsel appearing for petitioner and Mr.Deshpande, learned A.G.P. for respondent Nos. 1 and 2.

2. In all these petitions, the issue involved is identical and they were heard together and can be disposed of by a common order.

3. Grievance of the petitioners is that respondent No.2 is refusing to approve their appointments in the respective colleges on the ground that there is backlog of reservations.

4. Our attention is invited by Mr.Deshpande to the affidavit of S.C.Mandlik, filed on behalf of respondent Nos. 1 and 2. It is contended therein that the proposals do not mention as to whether the appointments are made on part time basis or clock hour basis. Therefore, initially the proposals were rejected. Thereafter, appointment of petitioners was approved on clock hour basis. It is contended that the appointment of petitioners was not against a permanent and full time post. Approval was granted earlier ignoring the position of backlog. Although, approval has been granted in favour of some candidates in the same institution, that will not assist the petitioners at all. The Dy.Director, according to affidavit, cannot interfere with the working and functioning of the office of Education Officer (Secondary), sofar as approval to the appointment of Secondary School Teachers. Neither there are any suo mottu powers conferred to initiate action once approval is granted. Therefore, approvals granted in favour of some teachers would not advance the case of petitioners. For all these reasons it is prayed that petitions be dismissed.

5. Our attention is invited by Mr.Bandiwadekar to the Maharashtra Employees of Private School Rules (MEPS Rules), wherein specific percentage has been prescribed for reservation for backward classes. It is contended that the Government cannot prescribe different percentage. It is contended that unless and until the State Government carries out suitable amendments to Rule 9(7) of MEPS Rules, no reliance can be placed on the G.R. The State is bound by Rule 9(7) of MEPS Rules and the percentage of backlog has to be worked out in accordance therewith. Consequently, the orders refusing approval are unsustainable and are required to be quashed and set aside.

6. With the assistance of learned Counsel appearing for parties, we have perused the appointment orders and the orders refusing approval. In our view, insofar as the aspect of backlog is concerned, the same has not been examined in the light of the Rules as well as law laid down by the Supreme Court from time to time. In our view, the issue of backlog will have to be

examined afresh. Therefore, for that purpose matter is remitted back to respondent No.2/ Education Officer (Secondary) for deciding the issue of backlog of reservation in the concerned institutions. Needless to observe that the said authority will hear all affected parties and pass speaking order on the same in accordance with law. Further needless to observe that management would be entitled to place such materials as it may be advised on the issue of backlog.

7. Another grievance that is made by the learned Counsel appearing for petitioners is that the appointments cannot be approved on clock hour basis. We find much substance in this contention. Some of the petitioners who are appointed prior to the scheme (Shikshan Sevak) have completed the requisite period till the relevant G.R. i.e. 13th October 2000. Therefore, the said scheme cannot be made applicable to the teachers who are appointed on part time or on clock hour basis earlier. In our view, such of the petitioners who have been appointed on part time/ clock hour basis before the above mentioned G.R., cannot be appointed as

Shikshan Sevaks but their appointments will have to be approved as Assistant Teachers. We, therefore, direct that such appointments be approved after examining the issue of backlog as Assistant Teachers and not as Shikshan Sevaks. We direct the authorities to take into consideration this aspect and pass appropriate orders in accordance with law, without being influenced by the earlier orders of approval on clock hour basis.

8. Respondent No.2 is directed to pass appropriate orders in accordance with law after deciding the issue of backlog within a period of six months from today. We make it clear that we have not expressed any opinion insofar as this issue is concerned.

9. All petitions are disposed of in the above terms with no costs.

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